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C O N F I D E N T I A L SECTION 01 OF 02 BAGHDAD 001553

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SUBJECT: NEW AMNESTY AMENDMENTS: A THREAT TO CONTINUED  
RELEASES?

REF: BAGHDAD 1332

Classified By: Deputy PolCouns Ellen Germain for reasons 1.4 (b) and (d)  
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11. (C) SUMMARY: The Council of Ministers approved amendments to the Amnesty Law on May 6 that would exempt more detainees from receiving amnesty due to concerns of granting amnesty to terrorists (reftel). The new provisions would exclude anyone charged with or convicted of crimes of terrorism from receiving amnesty (currently only terrorism crimes resulting in death or permanent disability are excluded); they would also cancel the existing provision that says all detainees who have been in detention for six months without going to an investigative judge or for one year without going to a court should receive amnesty. The amendments have gone to the Higher Judicial Council for comment before they will be sent to the Council of Representatives for consideration. Chief Justice Medhat told USG officials on May 12 that the only way for the amendments to have any impact, given the fact that the adjudicating committees have completed 85% of all claims, would be if they took effect retroactively. He said, however, that this would be unconstitutional. The Prime Minister advised the ministers on May 6 that releases should be suspended while the amendments are being considered. However, releases are continuing, including those of detainees charged and convicted of terrorism-related crimes. END SUMMARY.

12. (C) The Council of Ministers (CoM) passed amendments to the Amnesty Law on May 6. The new provisions, drafted by Abbas Al-Saidi, head of the PMO legal department, would exclude anyone charged with or convicted of crimes of terrorism from receiving amnesty (currently only terrorism crimes resulting in death or permanent disability are excluded). Minister of Human Rights Wijdan Salim told PolOff that she and Deputy Prime Minister Barham Saleh voiced opposition to this article because, while they want to keep AQI terrorists in prison, they think this will exempt too many other people from amnesty as well. Wijdan said she would have preferred the amendment to only exempt AQI members from amnesty, not everyone charged with or convicted of terrorism crimes. The new draft amendments would also cancel the Article 3, Section B provision that says all detainees who have been in detention for six months without going to an investigative judge or for one year without going to a court should receive amnesty. However, Wijdan dismissed the importance of this article, saying that Medhat is not currently implementing this provision anyway.

13. (C) Wijdan said she and Barham were unhappy with the changes because they view them as "cancelling the amnesty law." Wijdan cautioned that the amendments will cause more problems with Tawafuq since much of what they wanted in an amnesty law would now be removed. The amendments were sent to the Higher Judicial Council (HJC) for comment and review before they will be sent to the Council of Representatives (CoR) for consideration. Several CoR members confirmed to PolOff on May 14 that they have not received these amendments yet, but agreed with the idea of excluding AQI terrorists

from receiving amnesty.

HJC: AMENDMENTS NOT RETROACTIVE, WILL HAVE NO IMPACT

14. (C) Asked his views on the amendments, Chief Justice Medhat al-Mahmoud told EmbOffs on May 12 that he agreed with the basic principles: terrorists should never be the beneficiaries of amnesty, regardless of whether their cases have been delayed or whether they have committed terrorist offenses that have consequences other than murder or permanent disability (the current statute authorizes releases for some terrorists on both of these grounds (reftel)). However, he stated, the version is not yet sufficiently "clean" or precise to be adequate.

15. (C) Chief Justice Medhat questioned what value it would be to comment on amendments already approved by the CoM, implying he should have been consulted before the CoM decided on the amendments. He added that a committee to consider amnesty amendments was already in existence, and includes a member nominated by the HJC, and he argued that this committee would have been the proper way to provide the best draft amendments.

16. (C) Medhat doubted the effectiveness of the amendments, commenting that at least 85% of the amnesty claims have already been processed. By the time the CoR could pass the legislation, he expects that every claim will have been adjudicated. He said this was relevant because the statute cannot have retroactive effect. The Constitution prohibits retroactivity in criminal laws unless they benefit the defendant. EmbOffs asked if the amendments should be

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considered &criminal laws8 because they do not define any criminal conduct and do not change adjudications of guilt or innocence, but merely offer grace and favor reductions of sentences to those who are assumed to be guilty. (NOTE: Such an interpretation would eliminate the potential problem with retroactivity under Article 19, Tenth of the Iraqi Constitution, though the Council of Representatives would still need to stipulate that the law be applied retroactively. END NOTE.) The Chief Justice rejected the proposition that it was a "civil" law, saying it dealt with criminals and must be treated as criminal law. He added that if Parliament explicitly stated that the statute would be treated retroactively, it would be a question for the Supreme Court, and he implied that his vote would hold such a retroactivity provision unconstitutional. (NOTE: There are nine judges on the Supreme Court. END NOTE.)

17. (C) Medhat added that the HJC would not stop processing claims that were valid under the current law, simply because the CoR might at some future point adopt amendments to that current law. Such a position would contravene the rights of individuals and not be in keeping with the rule of law. Consequently, he argued, the issue of amending the statute would likely be entirely without value on any practical level, even though he admits he is fully sympathetic with the belief that the current law is seriously flawed.

CONTINUED RELEASES?

18. (C) Wijdan claimed that after the amendments were passed in the CoM, the Prime Minister said that the GOI should stop releasing people who have already been granted amnesty while the amendments are being considered. Some detainees, however, including those charged with terrorism crimes, are still being released, at least from Ministry of Justice (MoJ) facilities, regardless of these amendments under consideration. Since the amendments were approved, 128 detainees have been released from Rusafa, an MoJ detention facility where there is a strong USG advisor presence. Rusafa, one of the largest GOI-run detention facilities, is a good representation of the larger Iraqi detainee population. The numbers of releases have been constant and include mainly

detainees charged with terrorism crimes (who under the proposed amendments would not be eligible for amnesty).

¶9. (C) Out of these recent releases, 99 were detainees charged with and convicted of some kind of terrorism-related crime under Article 4 of the 2005 Anti-Terrorism Act. (NOTE: The 2005 Anti-Terrorism law proscribes many acts of terrorism, such as weapons possession, membership in an organization, financial support, and kinetic terrorist actions. Because we have visibility on the terrorism charges of Coalition-held detainees under GOI investigation or trial, we know many of these individuals are actually charged with more minor crimes, like weapons possession. END NOTE.) If the amendments passed the CoR, they would ban releases of those charged or convicted of any type of terrorism crime. At the moment, those types of amnesty releases are continuing, despite the possible imposition of the amendments.

¶10. (C) Although we are concerned with AQI terrorists being set free, we have some assurances that those released have not committed acts that make them ineligible for amnesty. There are two governmental bodies reviewing each terrorism release order. The HJC appeals panel is comprised of judges, and is derived according to the statute, and the Ministry of Justice has set up its own extralegal review committee to review each HJC release order related to terrorism charges that is sent to the ministry. This committee is made up of Hanna Nisayeeef, the Director General of the legal department, Ra'id Sa'ad Allah, the director of the legal complaints department, and Ra'id Ali, the director of the legal department for the Iraqi Corrections Service. If the committee has any problem with a case, they forward it to Deputy Minister of Justice Posho, who reviews the case and can send it back to Chief Prosecutor Ghadanfer in the HJC.

¶11. (C) COMMENT: If the amendments were to pass with retroactive effect and were not declared unconstitutional, they would have a significant impact on the numbers of amnesty cases approved and numbers of releases. Many Sunnis charged with terrorism crimes are currently eligible for amnesty because they were charged and convicted of a terrorism crime that did not result in death or permanent disability. Denying them amnesty after the original amnesty law allowed it could further hinder reconciliation efforts.  
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